

IN THE COURT OF CLAIMS OF OHIO

DAVID M. NYE

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-01000-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} Plaintiff David Nye filed this claim on December 30, 2014 to recover damages which occurred when his 2013 Honda Civic was struck by flying debris, while traveling eastbound on Interstate 70 on April 22, 2014 in Franklin County, Ohio.

{¶2} Specifically, plaintiff claims that as he was driving on I-70, a rubber truck/bus tire came flying through the air and struck a lamp post, which caused the glass from the lamp post to dislodge from its holder. The glass then struck plaintiff's vehicle and caused a number of scratches and small dents. Plaintiff claims ODOT was negligent not merely in the way that the road was maintained, but also in the way it deployed and/or maintained the light post in question.

{¶3} This road is a public road maintained by the Ohio Department of Transportation. Plaintiff's vehicle sustained damages in the amount of \$382.92. Plaintiff maintains an insurance deductible in the amount of \$1,000.00.

{¶4} In order to recover on a claim for roadway damages against the Ohio Department of Transportation, Ohio law requires that a motorist/plaintiff prove all of the following:

{¶5} That the plaintiff's motor vehicle received damages as a result of coming into contact with a dangerous condition on a road maintained by the defendant.

{¶6} That the defendant knew or should have known about the dangerous road condition.

{¶7} That the defendant, armed with this knowledge, failed to repair or remedy the dangerous condition in a reasonable time.

{¶8} In this claim, the Court finds that the plaintiff did prove that his vehicle received damages and that those damages occurred as a result of the plaintiff's vehicle coming into contact with a dangerous condition on a road maintained by the defendant.

{¶9} The next element that a plaintiff must prove to succeed on a claim such as this is to show that the defendant knew or should have known about this dangerous condition.

{¶10} Based on the evidence presented, the Court is unable to find that the defendant had actual knowledge of the dangerous condition. Likewise, the Court is unable to find that the defendant should have known about this dangerous condition and thus would have had constructive notice about the highway danger. Constructive notice is defined as "(n)otice arising from the presumption of law from the existence of facts and circumstances that a party has a duty to take notice of...Notice presumed by law to have been acquired by a person and thus imputed to that person." (Black's Law Dictionary at 1090 8th Ed. 2004.)

{¶11} In order for there to be constructive notice, a plaintiff must prove that sufficient time has passed after the dangerous condition first appears, so that under the circumstances the defendant should have gained knowledge of its existence. This the plaintiff has been unable to do.

{¶12} In the investigation report filed March 12, 2015, the defendant stated that the location of the incident was at Milepost 102.9 on IR 70 in Franklin County. This section of the roadway has an average daily traffic count of between 98,590 and 110,270 vehicles. Despite this volume of traffic, the department had received no notice of loose road debris being present on this section of the road. Thus, the Court is unable to find that the department knew about the debris. Within the past six months, the

department conducted over three hundred thirty (330) maintenance operations on IR 70 in Franklin County. If loose road debris, in this case a tire, had been present for any appreciable length of time it is probable that it would likely had been discovered by the department's work crews. Thus, the Court cannot find that the department should have known about this road debris.

{¶13} Nor is the Court in a position to find that there is negligence on the part of ODOT in deploying and maintaining the light post. First, there is an open question whether ODOT or the City of Columbus is responsible for the light post. However, even if ODOT is responsible for the light post, there simply is not sufficient evidence furnished to this Court to allow the finder of fact to conclude that the Department was negligent in deploying or maintaining the post. Such evidence would either have to come from ODOT itself or an expert in the field.

{¶14} Finally, the law in Ohio is that the department is not an absolute insurer of a motorist's safety on the highway. The department is only liable for damage when the Court finds that it was negligent. This the Court is unable to do.

{¶15} Since the plaintiff is unable to prove that the defendant knew or should have known about this dangerous condition, the claim must fail.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

MARK H. REED
Clerk

Entry cc:

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